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**DISPUTE OU #4 RI
U.S. DOE - FERNALD
OH6 890 008 976**

1-10-91

**USEPA/DOE-FMPC
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LETTER**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
230 SOUTH DEARBORN
CHICAGO, ILLINOIS

1179

JAN 10 1991

REPLY TO ATTENTION OF:

Mr. Andrew P. Avel
U.S. Department of Energy
Feed Materials Production Center
P.O. Box 398705
Cincinnati, Ohio 45239-8705

RE: Dispute OU #4 RI
U.S. DOE - Fernald
OH 890 008 976

Dear Mr. Avel:

The United States Environmental Protection Agency (U.S. EPA) acknowledges the receipt of the United States Department of Energy's (U.S. DOE) December 26, 1990, letter. In this letter, U.S. DOE seeks to supplement its December 20, 1990 notice of dispute regarding the Remedial Investigation (RI) Report for Operable Unit (OU) #4. U.S. DOE argues that the deadline for submitting the OU #4 RI Report should have been extended because the events preceding its submittal constituted "force majeure" under Section XIX of the 1990 Consent Agreement. U.S. DOE acknowledges that the December 26, 1990 letter is well beyond the forty-eight (48) hour verbal and twenty (20) day written notice periods provided under the Consent Agreement, and requested that U.S. EPA waive such requirements.

U.S. EPA has carefully considered U.S. DOE's request and, without discussing the merits of the force majeure claim, finds that it is not appropriate to waive the notice requirements. The events listed in your recent letters occurred months prior to the OU #4 RI dispute. Despite these events, and U.S. EPA's warning that the RI Report would not be acceptable without adequate field data, U.S. DOE chose to submit a document which U.S. EPA considers seriously deficient.

While U.S. EPA shares U.S. DOE's interest in solving the problems facing this project, U.S. EPA believes that the current dispute negotiations provide the best forum for addressing these issues.

Sincerely,

Catherine A. McCord
Remedial Project Manager

cc: Director, OEPA - CO
Graham Mitchell, OEPA - SWDO
Joe LaGrone, U.S. DOE - ORO
Leo Duffy, U.S. DOE - HDQ
Gerald Westerbeck, U.S. DOE

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